

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

CHICAGO REGIONAL COUNCIL OF)	
CARPENTERS PENSION FUND, et al.,)	
)	
Plaintiffs,)	
)	
v.)	No. 13 C 1655
)	
ATHLETIC SURFACES EQUIPMENT,)	
et al.,)	
)	
Defendants.)	

MEMORANDUM ORDER

Stalker Flooring, Inc. ("Stalker") has filed its Answer to the Complaint brought against it and Athletic Surfaces Equipment ("Athletic") by three employee benefit funds that assert ERISA-based claims. That responsive pleading denies the Complaint's various allegations that would impose ERISA liability on Stalker on a derivative basis from its codefendant Athletic, but the Answer is then followed by this purported affirmative defense:

The Complaint fails to state a claim upon which relief can be granted.

That assertion is essentially equivalent to a Fed. R. Civ. P. 12(b)(6) motion, and as such it violates the basic principle that any such contention must accept a complaint's allegations as gospel. On that premise the affirmative defense is no better than frivolous, and it is therefore stricken.



Milton I. Shadur
Senior United States District Judge

Date: July 15, 2013